

### REMARKS

The Applicants expressly acknowledge the indication that claims 7-19, 21-27 and 29 are allowed and that claim 5 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

Claims 1-4, 6 and 28 stand rejected under § 103(a) in view of U.S. Patent No. 6,390,329, herein after Maddox, and U.S. Patent No. 6,398,513, hereinafter Amsler. Specifically, it is asserted that Maddox discloses all of the limitations of independent claims 1 and 4, except for an apparatus position indicator. To overcome this deficiency, it is alleged that Amsler teaches the use of an apparatus position indicator (58) to sense the position of a product sensor (54) where the apparatus position indicator includes at least one illumination device.

Prior to discussing the merits of the obviousness rejection, it is noted that claim 1 recited the word "area" twice. To clarify the claim, the "area" referring to where the valve dispenses is now referred to as a "zone."

Having fully considered the proffered combination of references, it is respectfully submitted that a *prima facie* case of obviousness has not been made. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Last, the prior art reference (or references, when combined) must teach or suggest all the claim limitations. Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectations of success must both be found in the prior art, and not based on the Applicant's disclosure. *In re Vaeck*, 947 F2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In regard to establishing a *prima facie* case of obviousness, the initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliably suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

No discussion or reasoning has been provided as to how the proffered combination of Maddox's object sensor and Amsler's apparatus indicator meet the claim 1 limitation of

*"wherein during initial positioning of the apparatus in an area, said apparatus position indicator provides an indication where said object sensor is properly positioned in said area"*

The "apparatus indicator" of Amsler just teaches the monitoring of a position of an object in a known defined range of positions. It does not teach where to position the apparatus itself. Fig. 4 in Amsler shows that the product sensor/sensor wheel 54 interrupts a light beam and that the sensor wheel can only travel between two fixed positions.<sup>1</sup> This position information regarding travel of the sensor wheel between two known positions is used to "consistently pump a precise amount of colorant from a given colorant canister."<sup>2</sup> Absolutely no teaching is provided that the position information of Amsler is used in any way to provide an indication when the object sensor is properly positioned in an area. Since each and every element is not taught or suggested by the proffered combination, it is respectfully submitted that a *prima facie* case of obviousness cannot be made.

It is also submitted that there is absolutely no teaching, suggestion or motivation in Maddox to look to Amsler for the teachings of a position indicator. Neither reference recognizes that where the apparatus is positioned is a problem. Nor is there any indication that the positioning of the apparatus requires anything more than attaching the apparatus to a wall or other fixed position. It is also submitted that there is no expectation of success in combining the references with one another. If anything, the teachings of Amsler would be associated with the pump mechanism 40 of Maddox. But this combination of features still would not provide any indication as to when the entire apparatus is properly positioned. Indeed, the mechanism for controlling Amsler's dispensing motor (Fig. 4: 62, 54, 58) and the mechanism for controlling Maddox's dispensing motor (Fig. 2: 50, 52, 54, 74, 76, 151) have nothing to do with where the apparatus is placed. Since each reference already teaches a mechanism for controlling the dispensing motor, there is absolutely no motivation in one reference to look to the other reference.

It is respectfully submitted that each and every element in the claim is not found in the proffered combination of references. Nor is there any teaching, suggestion or

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<sup>1</sup> U.S. Patent No. 6,398,513; Column 4, lines 31-36

<sup>2</sup> *Id.* at Column 5, lines 20-21

motivation to combine the references provided. And finally, there is no expectation of success in combining the references. Therefore, a *prima facie* case of obviousness has not been made and the rejection of claims 1-4 should be withdrawn.

In the spirit of expedited prosecution, the Applicants respectfully request an amendment to claim 1 to set out that the positioning of the apparatus in an area is done so that the apparatus position indicator provides an indication where the object sensor is properly positioned in the area to prevent to inadvertent triggering of the object sensor. Basis for this amendment can be found in the specification at least at page 13, lines 12-26. Therefore, in view of the remarks submitted above and the further amendment to the claim, withdrawal of the rejection of claim 1 and all claims depending therefrom is respectfully requested.

Reconsideration of the claim 4 rejection is respectfully requested. Nowhere does Maddox or Amsler disclose emitting a test signal from the object sensor. Nor does the proffered combination of references disclose repeating steps c) and d) -- positioning the fluid dispenser in at least one prospective mounting location, and emitting from the object sensor a test signal to ensure proper positioning of the fluid dispenser -- until the apparatus position indicator provides an indication that the prospective mounting location is a proper mounting location. No passages in either of the references are cited by the Examiner that teach or even suggest such a methodology. Therefore, withdrawal of this rejection is respectfully requested.

In view of the foregoing amendments and remarks presented herein, the Applicants believe that they have properly set forth the invention and, accordingly, request that the Examiner reconsider and withdraw the objections and rejections provided in the previous Office Action. A formal Notice of Allowance of claims 1-19 and 21-29 is earnestly solicited. Should the Examiner care to discuss any of the foregoing in greater detail, the undersigned attorney would welcome a telephone call.

In the event that a fee required for the filing of this document is missing or insufficient, the undersigned Attorney hereby authorizes the Commissioner to charge payment of any fees associated with this communication or to credit any overpayment to Deposit Account No. 18-0987. If a withdrawal is required from Deposit Account No. 18-0987, the undersigned Attorney respectfully requests that the Commissioner of Patents and

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew B. Morton", with a long horizontal flourish extending to the right.

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